

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

SLOAN VALVE COMPANY,	)	
	)	
Plaintiff,	)	Case No. 10-cv-00204
	)	
vs.	)	Judge Amy J. St. Eve
	)	
ZURN INDUSTRIES, INC., and ZURN	)	
INDUSTRIES, LLC,	)	Magistrate Judge Sidney I. Schenkier
	)	
Defendants.	)	
	)	

**JOINT REPORT RELATING TO THE  
DAUBERT HEARING FOR RICHARD F. BERO**

As required by the Court's written procedures, the parties hereby provide the following Joint Report Relating to the *Daubert* hearing for Richard Bero. Mr. Bero's hearing is slated for March 11, 2014 at 9:30 AM.

**WITNESSES**

The parties agree that the only witness who will be called is Mr. Bero.

**ORDER OF PRESENTATION**

The parties respectfully request to present opening remarks. Defendants, as the movants, will go first in providing opening remarks. Each side will have a maximum of ten (10) minutes for opening remarks, without any rebuttal.

Plaintiff will then present the direct examination of the expert at issue, followed by Defendants' cross-examination. Each side will have the opportunity to conduct one re-direct examination or re-cross examination.

For the purpose of these hearings only, and without conceding the relevance of any of the exhibits beyond this hearing, the parties agree that the following Exhibits designated herein are

admissible without objection. Exhibits shall be moved into evidence at the conclusion of the examinations.

Plaintiff does not think closing remarks are necessary, but if the Court would like them, Plaintiff proposes that closing remarks be limited to five (5) minutes with Defendants, as movant, going first. Defendants propose that each side be allotted twenty five (25) minutes for closing arguments with the Plaintiff going first. The parties agree that neither side will present a rebuttal.

### **ISSUES TO ADDRESS PRIOR TO ARGUMENT**

The parties anticipate that the *Daubert* hearing will involve the disclosure of confidential information. The parties anticipate that the Court's standard practice of providing time for redactions before the release of transcripts will suffice to protect any confidential testimony elicited at the hearing.

The parties agree that PowerPoint® or a similar presentation aid may be used during the *Daubert* hearing, and that such materials may be provided to the Court in hard copy and/or electronic copy. Objections are hereby reserved for any other demonstrative aids or other evidence that any party may seek to offer or otherwise reference during the hearings.

### **AGREED EXHIBIT LIST**

<b>EXHIBIT</b>	<b>SOURCE/ DOCKET NUMBER</b>	<b>DESCRIPTION OF DOCUMENT</b>
1.	Report – Dkt Nos. 558-6 (Part 1) and 558-7 (Part 2).	Expert Report of Richard F. Bero CPA, CVA – Dated January 28, 2013
2.	Report – Dkt Nos. 558-1 (Part 1), 558-2 (Part 2), 558-3 (Part 3) and 558-4 (Part 4)	Rebuttal Expert Report of Richard F. Bero CPA, CVA – Dated April 5, 2013
3.	Deposition – Dkt No. 558-5 and Dkt. No. 688-2	Richard F. Bero Deposition Transcript with Word Index and Exhibits, taken March 1, 2013

<b>EXHIBIT</b>	<b>SOURCE/ DOCKET NUMBER</b>	<b>DESCRIPTION OF DOCUMENT</b>
4.	Disclosures – Dkt. No. 687-1 and 689-1	Plaintiff’s Amended Disclosures Pursuant To Fed. R. Civ. P. 26(A)(2)
5.	Deposition – Dkt. No. 687-1	John Aykroyd Deposition Transcript with Word Index, taken October 22, 2012
6.	Deposition – Dkt. No. 689-1	John Aykroyd Deposition Transcript with Word Index, taken April 24, 2013
7.	Deposition – Dkt. No. 689-1	James C. Allen Deposition Transcript with Word Index, taken November 12, 2010
8.	Deposition – Dkt. No. 689-2	James C. Allen Deposition Transcript with Word Index, taken April 30, 2013
9.	Deposition – Dkt. No. 689-2	William A. Madison Deposition Transcript with Word Index, taken February 14, 2013
10.	Deposition – Dkt. No. 689-2	William A. Madison Deposition Transcript with Word Index, taken April 30, 2013
11.	Deposition – Dkt. No. 688-1	Leone Flosi Deposition Transcript with Word Index, taken February 18, 2013
12.	Deposition – Dkt. No. 554-4	Julius Ballanco Deposition Transcript with Word Index, taken February 25, 2013
13.	Article	<i>Constructing Royalty Rates</i> , Richard F. Bero
14.	Article	<i>Constructing Royalty Rates</i> , Richard F. Bero and Joan Eads
15.	Article	<i>Damages in Patent Infringement Lawsuits</i> , A BVR Webinar, January 14, 2011, Richard F. Bero and Robert A. Surrette
16.	Deposition – Dkt. No. 697-8	Charles S. Allen Deposition Transcript with Word Index, taken April 30, 2013
17.	Book Chapter	<i>The Comprehensive Guide to Lost Profits</i> , “Lost Profit Damages in Patent Infringement Lawsuits” (Chapter 19, 2011 ed. BVR Publications)
18.	Study – Dkt. No. 620-7 at 138.	2008 IGS Market Assessment dated February 25, 2008
19.	Price Guide – Dkt. No. 612-12	Sloan Price Guide

<b>EXHIBIT</b>	<b>SOURCE/ DOCKET NUMBER</b>	<b>DESCRIPTION OF DOCUMENT</b>
20.	Price Guide – Dkt. No. 612-13	Zurn Price Guide
21.	Deposition – Dkt. No. 546-13	John Wilson Deposition Transcript with Word Index, taken October 14, 2010
22.	Report – Dkt. No. 546-16(Part 1), 546-17 (Part 2) and 546-18 (Part 3)	Expert Report of Julius Ballanco dated January 28, 2013
23.	Deposition – Dkt. No. 620-14	John T. Boyer Deposition Transcript with Word Index, taken April 23, 2013
24.	Email – Dkt. No. 620-9	Sloan Email dated May 24, 2005
25.	Email – Dkt. No. 611-16	Zurn New Product Announcement for Dual Flush Handle Assembly dated August 16, 2005
26.	Email – Dkt. No. 620-10	Zurn Email dated August 16, 2005
27.	Email – Dkt. No. 620-13	Zurn Email dated June 21, 2005
28.	Patent – Dkt. No. 546-6	U.S. Patent No. 7,607,635
29.	Marketing Materials – Dkt. No. 612-15	Zurn's Marketing Materials
30.	Excerpts from Report – Dkt. No. 620-15	Expert Report of Ivan T. Hofmann dated March 8, 2013
31.	Deposition – Dkt. No. 612-91 at 37-39	John Wilson Deposition Transcript with Word Index dated May 2, 2013
32.	Report – Dkt. No. 546-20	Expert Report of Julius Ballanco dated March 8, 2013
33.	Article – Dkt. No. 620-13	Sensor-Operating Plumbing Fixtures – Do they Save Water? Article dated March 2010
34.	Deposition	Frank Lastowski Deposition Transcript with Word Index dated December 7, 2010
35.	Deposition	Allen Becker Deposition Transcript with Word Index dated September 28, 2010

<b>EXHIBIT</b>	<b>SOURCE/ DOCKET NUMBER</b>	<b>DESCRIPTION OF DOCUMENT</b>
36.	Deposition	Scott McDowell Deposition Transcript with Word Index dated October 25, 2012
37.	Deposition – Dkt. No. 577-18	Randy Foltz Deposition Transcript with Word Index dated December 3, 2010
38.	Deposition – Dkt. No. 619-3	Michael Funari Deposition Transcript with Word Index dated December 2, 2010
42.	Document – SVC0331058	Dual Flush Manual Handle Memorandum dated January 10, 2005

In addition, Plaintiff incorporates all documents listed on Attachment 1 to Rebuttal Expert Report of Richard F. Bero CPA, CVA – Dated April 5, 2013 (Dkt Nos. 558-1 (Part 1), 558-2 (Part 2), 558-3 (Part 3) and 558-4 (Part 4) and exhibits to Sloan Valve Company’s Memorandum of Law in Opposition to Zurn’s Daubert Motion to Exclude Testimony of Richard Bero (Dkt. 613).

### **DISPUTED EXHIBITS**

The parties have not agreed upon the introduction and use of the exhibits listed below and reserve the right to object to the use of the following documents at the *Daubert* hearing.

<b>EXHIBIT</b>	<b>SOURCE/ DOCKET NUMBER</b>	<b>DESCRIPTION OF DOCUMENT</b>	<b>PARTY OFFERING DOCUMENT</b>	<b>OBJECTING PARTY</b>
101.	Report - Dkt. No. 480-1	Updated Expert Report of Richard F. Bero CPA, CVA – Dated February 25, 2013	Defendants	Plaintiff
102.	Deposition	Timothy A. Smith Deposition Transcript with Word Index, taken February 14, 2013	Defendants	Plaintiff
201.	Chart	Chart including excerpts of deposition testimony related to convoyed sales	Plaintiff	Defendants
202.	Chart	Chart including excerpts of deposition testimony related to potential non-infringing alternatives	Plaintiff	Defendants

EXHIBIT	SOURCE/ DOCKET NUMBER	DESCRIPTION OF DOCUMENT	PARTY OFFERING DOCUMENT	OBJECTING PARTY
203.	Chart	Chart including excerpts of deposition testimony related to price erosion.	Plaintiff	Defendants

AGREED BY:

Dated: March 4, 2014

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### **CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2014, I caused to be filed electronically the foregoing **JOINT REPORT RELATING TO THE *DAUBERT* HEARING FOR RICHARD F. BERO** with the Clerk of the Court using the CM/ECF system, which will send an electronic copy of the foregoing to counsel of record and constitutes service under Federal Rule of Civil Procedure 5(b)(2)(D) pursuant to Local Rule 5.9 of the Northern District of Illinois.

/s/ Nicole M. Murray  
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Inc. and Zurn Industries, LLC